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No. 83-1015

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., ET AL.,

Appellants,

v.

HAMPTON COUNTY ELECTION COMMISSION, ETC., ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
(THREE-JUDGE COURT)

BRIEF FOR APPELLEES

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Hampton County Election Commission,
Its Members, Hampton County Treasurer

QUESTIONS PRESENTED

1. Whether or not the scope of the Voting Rights Act includes prohibiting a covered jurisdiction from conducting the preliminary step of opening filing for county offices before the Act containing these filing dates is precleared when this filing will be null and void if the act is not precleared.

2. Whether or not the scope of the Voting Rights Act includes requiring a new election date to be precleared when the election date established by the precleared Act and which had been suspended from implementation while awaiting preclearance cannot be implemented because preclearance comes after the date set forth in the Act for the election.

STATEMENT OF THE CASE

Prior to 1982 Hampton County had an appointed six member County Board of Education. The County was also divided into two school districts which were each governed by a six-member Board of Trustees, each member being appointed by the County Board of Education.

On February 18, 1982, Act 547 was enacted by the South Carolina General Assembly. This Act provided that beginning with the general election in 1982, the Hampton County Board of Education would be composed of six members elected at large. On February 24, 1982, this Act was submitted to the Justice Depart-

ment for Voting Rights review and on April 28, 1982 the Justice Department entered no objection to the Act.

Following the enactment of Act 547, but before the Justice Department entered no objection to the Act, the General Assembly enacted a new law regarding the Hampton County education system, Act 549, which, when precleared by the Justice Department, would supersede Act 547. This Act provided for a referendum to be held to decide if the County wanted to abolish the County Board of Education and the Hampton County Superintendent of Education and have their duties devolve upon the trustees for School Districts One and Two who would be elected. This Act further reduced the number of Trustees in each district from six to five and required that filing for these offices be held between the dates of August

16-31, 1982. This referendum was held and approved by the electorate. Once all the information for the submission was compiled, the Act was submitted to the Justice Department for preclearance on June 22, 1983.

In order to comply with state law requirements which mandated filing to be held during the period of August 16-31 and federal law requirements that required Voting Rights Act review before an election could be held under either Act 547 or Act 549, the Hampton County Election Commission opened filing for offices for either election that might be held; i.e., the election of a County Board of Education pursuant to the provisions of Act 547, or the election of two Trustee Boards pursuant to the provisions of Act 549. The Justice Department did not respond until August

23, 1982, which was in the middle of the mandatory filing period for the offices provided for under the provisions of Act 549. On August 23, 1982, a letter was sent to the South Carolina Attorney General's Office stating that the Justice Department objected to Act 549. This letter was not received by the South Carolina Attorney General's Office until August 26, 1983. It was then forwarded by mail to the members of the General Assembly who had sponsored the bill. By August 31, 1983, a letter had been sent to the Justice Department formally requesting reconsideration of their objection. On November 19, 1983, the objection was withdrawn. By this time elections required by the only Act then approved by the Justice Department, Act 547, had been

required to be held. However, approval of Act 549 voided Act 547 as its provisions were superseded by Act 549.

On November 29, 1982, the Chairman of the Hampton County Election Commission wrote the South Carolina Attorney General's Office seeking guidance as to if an election should be held, when an election should be held, and if the filing that the Hampton County Election Commission had conducted during the time specified by the new precleared Act should be re-opened. (J.A. 74a). On January 4, 1983, a letter was issued by the South Carolina Attorney General's Office stating that an election should be held because the provisions of Act 549 (R398) were then in effect; that this election should be held as soon as possible; and, assuming that prospective candidates were aware of the filing period of August 16-

31, the filing dates would not have to be re-opened in that only the date of the election had changed. (J.A. 68a). The question of whether or not any of these steps would require preclearance was not at issue in this correspondence.

An election was held on March 15, 1983, for the offices provided for by Act 549. All of the elected members of the District Two Board of Trustees are black. One of the five elected members of the District One Board of Trustees elected is also black.

On March 11, 1983, this action was brought alleging violations of Section 5 and Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution. On March 12, 1983, a Motion for a Temporary Restraining Order was filed by the appellants in this case. This Motion

was denied following a March 14, 1983 evidentiary hearing. On September 9, 1983 a three-judge court was convened and dismissed the complaint insofar as it sought to state a claim under Section 5 of the Voting Rights Act.

SUMMARY OF ARGUMENT

I

Hampton County did not attempt to implement an unprecleared change.

II

Pursuant to Act 549, which was subsequently precleared, filing must occur between August 16-31, 1982. There was no other authority providing a time for conducting filing other than these dates. Hampton County, therefore, conducted filing during this period as a preliminary step to an election that would only be held if the Justice Department precleared Act 549. Authorizing

preliminary steps of filing is not attempting to implement an unprecleared Act. It is a step to an election which will not be held if the Act is objected to. Further, assuming arguendo that filing should not have occurred prior to receiving preclearance from the Justice Department, once such approval was received it retroactively approved the filing which was a part of the precleared Act. Additionally, the Justice Department has not objected to filing as a preliminary step in the past.

III

The setting of a new election date was simply the "unfreezing" of an election delayed by virtue of submitting Act 549 to the Justice Department for preclearance under the Voting Rights Act. The setting of a date for an election that has

not been held due to preclearance not being received in time to hold the election when the Act mandated the election, does not require preclearance. The new date is not a change in South Carolina law but merely an attempt to enforce a law once precleared.

IV

The district court's discussion of whether or not a racially discriminatory purpose is a requirement of a Section 5 case is not properly before this Court.

V

The abolishment of the office of the Hampton County Superintendent of Education has been precleared.

ARGUMENT

I

Hampton County Did Not Attempt to Implement An Unprecleared Change.

At issue in this case is the scope [1] of the Voting Rights Act and the procedures that a covered jurisdiction may properly employ to implement and administer election laws while endeavoring to comply with the Voting Rights Act. Although this case concerns questions arising under the Voting Rights Act, it is a question of first impression and does not concern an issue specifically decided previously by this Court.

In Allen v. State Board of Elections, 393 U.S. 544, 569, the Court in the

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[1] In Allen, the Court stated that it was being called upon

> ...to determine the applicability of a statute [the VRA] where the language of the statute does not make crystal clear its intended scope. Allen, supra, p. 20.

On at least two other occasions members of the Court have mentioned the scope of Section 5 as a consideration in the cases before the Court. See also, East Carroll Parish School Board v. Marshall, 424 U.S. 636, 640, (Burger, C.J., concurring); City of Lockhart v. United States, __ U.S. __, 74 L.Ed. 2d 863, 870.

context of discussing reapportionment

legislation stated that

> ...the question of whether §5 might cause problems in the implementation of legislation is not properly before us at this time... The argument that some administrative problem might arise in the future...we leave to another case... [for] consideration of any possible conflict.

This case does illustrate the difficulties States face in implementing legislation that is subject to the Voting Rights Act while also attempting to conduct elections that are not completely disruptive to the electorate and that comply with state requirements and laws that are not subject to Section 5 review. However, it is not a case where a covered jurisdiction attempted to circumvent the Voting Rights Act or to delay the implementation of an Act. This is a case where the covered jurisdiction rigorously attempted to comply with the regulations

of the Voting Rights Act.

In the present case, on February 18, 1982, Act 547 was enacted by the South Carolina General Assembly. (J.S. 17a). This Act provided that the formerly appointed six-member Hampton County Board of Education would now be elected at large and that the first election would be held in the November general election. This Act was submitted to the Justice Department and received preclearance.

Before the Justice Department entered no objection to Act 547, the General Assembly enacted a new law regarding the Hampton County Board of Education. This new legislation was Act 549 which, when precleared, would supersede the provisions of Act 547. (J.S. 19a). This Act abolished the Hampton County Board of Education and the Office of the Hamp-

ton County Superintendent of Education devolving their powers upon the formerly appointed Boards of Trustees of Hampton School Districts One and Two which would now be elected. This Act established a specific time period when filing for these offices would be accomplished and set the November general election as the date for the first election.

Act 549 was originally objected to by letter dated August 23, 1982, and was not finally precleared until after the November general election on November 19, 1982. When Act 549 was objected to, the County did not attempt to implement this Act but conducted an election under the Act first approved, Act 547.

Once the objection to Act 549 was withdrawn, the Hampton County Board of Education was placed in an untenable position. The County's schools were

being governed by a Board that was abolished by Act 549, Act 549 having come into full force and effect of law once it received preclearance. The Hampton County Board of Education had no further legal existence under State or Federal laws and, therefore, could not properly or legally operate the Hampton County School system. Likewise, State and Federal monies for the school system had to be allocated to some proper authority which had the legal ability to function and disburse these monies.

An election, therefore, had to be held quickly to elect the proper district boards that would assume the powers previously exercised by the County Board and could lawfully function. The problem then presented to the County was how to implement the provisions of the precleared Act, Act 549, which had re-

ceived preclearance later than the date anticipated by statute for the scheduled election.

Earlier when both Acts were being considered by the Justice Department, in a good faith effort to comply with whatever election would ultimately be held, the Hampton County Election Commission accepted filings for both offices. This action was necessitated by the facts in this case.

On August 16, 1983, the local officials in Hampton County had before them an Act that had been precleared by the Justice Department that required a formerly appointed County Board of Education to be elected. By the provisions of Act 547 filing for these offices had

to be accomplished no later than forty-five days before the November 2 general election. Therefore, sometime in mid-September would be the last day a person could file for this office. On the other hand, there existed another Act, Act 549, which abolished this very Board and required the previously appointed Boards of Trustees to be elected in a general election. The Act further mandated filing for these offices to occur during the designated dates of August 16-31, 1982. This Act had been submitted to the Justice Department in June but no action had at that date been taken on the submission.

By newspaper articles and by communications with each person coming to file for office, the Hampton County Election Commission informed persons

they should file for both elections because it was not clear which office would be precleared by the Justice Department. (Appellees Hampton County Election Commission Motion to Dismiss or Affirm, App. 3a-10a). As the court noted in its Order, if filing had not been opened during this time period and

> [i]f Act 549 was precleared, pursuant to State law, it would supersede Act No. 547. But if preclearance came after August 31, Trustee elections could not be held as scheduled, because no candidate would have qualified by filing during the specified statutory filing period. (J.S. 4a-5a)

Proceeding with the preliminary step of filing did not constitute enforcement of an unprecleared change. Further, the County did not conduct an election prior to receiving preclearance of the submitted Acts.

II

Hampton County Can Proceed With The Preliminary Step of Filing Under An Act That Is Awaiting Preclearance.

A. Allowing filing for an office does not constitute an improper enforcement of an election law while awaiting its preclearance.

Allowing filing for an office is simply a preliminary step to an election that in this case was subsequently approved. If the Act had been disapproved, the filing would have been null and void. However, the Act was approved and, therefore, the filing was properly opened during the dates specified by the Act and those dates only.

The United States in its brief states that the Justice Department has "...consistently construed...[Section 5] ...as applying to the types of changes in voting practices and procedures that are

involved in this case." Brief of United States, pp. 8, 13-15. But, to the contrary, the covered jurisdiction had reason to believe that this procedure was proper and that the Justice Department deemed it proper. In this same year, 1982, the counties in South Carolina were being reapportioned following the release of the 1980 census figures for general elections to be held in 1982. Due to a conflict over whether the General Assembly or the counties had the authority to reapportion the counties, many of the counties had not yet drawn their reapportionment plans as of March 1, 1982. By statute, filing for county offices was to end at twelve o'clock noon on March thirtieth. South Carolina Code of Laws, 1976, Section 7-11-210, as amended. As reapportionment had not even been accomplished in several

counties, the statutory filing period could obviously not be met for these county offices. Therefore, on March 22, 1982, the General Assembly enacted Act 483 to delay the filing date of candidates for county councils which had not yet received preclearance to a "...time period to be determined by the General Assembly." (App. A) The General Assembly stated in Act 483 that it found this enactment necessary in that

> ...implementation of redistricting plans for...certain county council ...offices had been unavoidably delayed beyond the beginning of the filing periods established for party primary....

Subsequently, on April 22, 1982, the General Assembly enacted legislation which established the time period for filing previously left open-ended by Act 483. Act 484, bearing ratification number 413 (J.A. 55a), amended the filing period

for county offices for this one year to a specific date of April 23 to May 7, 1982. Subsection B of Section 1 of this Act provided as follows:

> [t]he filing period for candidates seeking nomination to any district within a county which has been or is being reapportioned and as of March 1, 1982, has not received preclearance pursuant to the provisions of Section 5 of the 1965 Voting Rights Act (42 USCA Sections 1973 et seq.) shall begin at noon on April 23, 1982, and shall close at noon on May 7, 1982.

This Act, as stated, was enacted on April 22 for filing to begin on April 23. The Justice Department stated in their letter they received the submission on April 27. Following a request for expeditious consideration, the Justice Department entered no objection to the Act on June 2. (J.A. 53a). The Justice Department, therefore, approved an Act regarding filing dates they received

after the date filing began and after the date filing had already closed. No where in the letter is it stated that they approved the Act but now new filing dates would have to be set because filing had occurred before the Act had been officially precleared. Indeed, the entire Act only concerned setting filing dates so nothing else could possibly be construed as being precleared. And as the dates were clear on the face of the submission, the Justice Department had to be aware that the filing had occurred before preclearance. They did not object to this procedure. Additionally, several counties' reapportionment plans were precleared in the middle of or following the close of this filing period. (J.A. 50a, 56a, 57a).

Having received preclearance of

Act 484 in June of 1982 just five months before the Justice Department precleared Act 549 and its statutory filing dates, the covered jurisdiction was justified in believing that the filing that occurred during the dates provided by Act 549 was proper and should not be re-opened. 2/

B. The Initiation Of Preliminary Steps As Well As The Enforcement of Actual Changes Prior To Preclearance Has Been Permitted By The Justice Department And The Courts.

The Justice Department has even taken the position in Court that merely

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2/ This is further supported by the fact much publicity was given to these filing dates and all candidates were advised to file for both offices - the offices established under Act 547 and the offices established under Act 549. (Appellees Hampton County Election Commission Motion to Dismiss or Affirm, App. 4a-5a, 7a-9a). Surely it cannot be argued that this procedure was a procedure utilized to minimize black candidates in that the record shows that six blacks and four whites were elected to office. Further, there was, of course, also the option of a write-in candidacy for anyone who failed to file during the statutory time period.

preliminary steps to an election should be continued pending preclearance of a submitted change. In Herron v. Koch, 523 F. Supp. 167 (E.D. NY and S.C. NY 1981) at footnote 11 the court notes that the United States Attorney General as amicus curiae had "...urged that... [the court] deny an injunction against the holding of the primary election on September 10, in hopes that preclearance by the Attorney General will be forthcoming prior to the general election of November 3." 3/

3/ In the instant case the Appellants are alleging that the Appellees improperly allowed preliminary filing procedures before preclearance and that this should be found to violate 42 U.S.C. 1973(c). However, there have been many cases in which the courts have found that a questioned change was one that should have been precleared and yet even in the face of this finding authorized an election to proceed. United States v. County Comm'n, Hale Cty, Ala, 425 F. Supp. 433 (S.D. Ala. 1976), judg't aff'd, 430 U.S. 924 (1977); Moore v. LeFlore Cty. Bd. of Election Comm'rs,

The Justice Department has also been on record as retroactively approving actual changes that have already been implemented. In Crowe v. Lucas, 472 F. Supp. 937 (N.D. Miss. 1979), a suit was brought contesting the validity of registration of voters because the registration was conducted pursuant to laws that were implemented eight months before they were submitted to the United States Department of Justice for preclearance. The Court held that since the Jus-

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351 F. Supp. 848 (N.D. Miss. 1971); Wilson v. North Carolina St. Bd. of Elections, 317 F. Supp. 1299 (M.D. N.C. 1970). See also Georgia v. United States, 411 U.S. 526 (1973). As stated in the dissent of Heggins v. City of Dallas, Tex., 469 F. Supp. 739, 745-746 (N.D. Texas 1979):

> [a] reading of the cases reveals that enjoining an election for an indefinite time until preclearance is obtained is the exceptional remedy rather than the normal one. [cites omitted.]

tice Department had subsequently approved the changes and was aware of the fact registration had already occurred under the new laws, the city had satisfied the preclearance requirements of Section 5. Additionally, in United States v. Sheffield Board of Commissioners, 435 U.S. 110 (1978), the Town of Sheffield wrote the Justice Department that they wanted to hold a referendum on whether or not the form of government should be changed. The referendum was held before the Justice Department responded. The Attorney General stated in his subsequent letter that he did not object to the referendum, that he was aware the referendum had been held and that since the voters had approved the change, the change authorized by the referendum would have to be submitted for preclearance.

In the case of Berry v. Doles, 438 U.S. 190 (1978), this Court upheld a three-judge Court that had allowed an election to stand even though the change had not received preclearance. The Court found that the change should, however, be submitted and "[i]f approval is obtained, the matter will be at an end." Berry, supra at 193.

The Appellees would submit that this same principle of retroactive approval that has been applied to actual changes is applicable in the instant case in regard to approving preliminary steps of filing that were at least precleared when the Act itself was precleared. 4/

4/ The appellants allege that filing was ineffective from August 23, 1982, when the Justice Department entered their original objection to Act 549. Appellees would assert that the letter of objection was not

If the local officials had suddenly, without authority, re-opened filing that would have been a change requiring pre-clearance. To have re-opened filing would also have affected the rights of those candidates who had filed during the statutory time limits established by the precleared Act.

Act 549 authorized the County to open filing and close filing at certain specific dates. When the Justice Depart-

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received by the South Carolina Attorney General's Office until August 26, 1982, and was then forwarded by mail to the Representative who introduced the bill. On August 31, the last day of the filing period, a letter was sent officially requesting reconsideration of the objection. The request for reconsideration kept open the possibility that Act 549 might eventually be approved thereby necessitating the continuation of filing. Additionally, the Chairman of the Hampton County Electin Commission has testified that he never received official notification that Act 549 had been objected to. (App. 9a-10a).

ment precleared Act 549, they also precleared the provision in the Act that required filing to be held August 16-31, 1982.

III

When Preclearance is Received After Time of Election Specified in The Act, Holding The Election At a Time Subsequent Constitutes An "Unfreezing" of The Election Process And Not An Improper Enforcement of The Precleared Submission.

Appellants further allege that preclearance should have been obtained prior to the change of the date of the elections provided for in Act 549 from November, 1982 to a subsequent time.

The Court has variously interpreted Section 5 review of election changes as having the effect of "suspending", "freezing", "delaying", or "postponing" the enforcement of the Act. In the first test case of the constitutionality of the Voting Rights Act, South Carolina

v. Katzenbach, 383 U.S. 301, 315-316, the Court stated that

> Section 5 prescribes a...remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetrate voting discrimination. (Emphasis added.)

See also South Carolina v. Katzenbach, supra, p. 334. This same language of a submitted Act being "suspended" was also used in Allen v. Board of Elections, 393 U.S. 544, 562; Perkins v. Matthews, 400 U.S. 379, 406 (Black, J., dissenting); Beer v. United States, 425 U.S. 130, 148, n. 3 (Marshall, J., dissenting). In Georgia v. United States, 411 U.S. 526, the Supreme Court stated that:

> ...it is important to focus on the entire scheme of §5. That portion of the Voting Rights Act essentially freezes the election laws of the covered States unless a declaratory judgment is obtained in the District Court for the District of Columbia holding that a proposed change is without

> discriminatory purpose or effect. The alternative procedure of submission to the Attorney General 'merely gives the governed State a rapid method of rendering a new State election law enforceable.' [Cite omitted.] (Emphasis added.) Georgia, supra, 411 U.S. at 538.

See also Beer v. United States, 425 U.S. 130, 140 quoting from H. R. Regs. No. 94-196, pp. 57-58; and page 152, n. 9 (Marshall, J., dissenting); United States v. Sheffield Board of Commissioners, 435 U.S. 110, 121.

In Morris v. Gressette, 432 U.S. 491, 501 the Court stated that

> Section 5 requires covered jurisdictions to delay implementation of validly enacted state legislation until federal authorities have had an opportunity to determine whether that legislation conforms to the Constitution and to the provisions of the Voting Rights Act. (Emphasis added.)

In Morris v. Gressette, supra, at 504, the Court further stated that Section 5

"postponed" the implementation of state legislation.

The courts have also held that pending Section 5 preclearance, any future elections are enjoined unless and until the State receives Section 5 preclearance. Georgia, supra, at 541; Connor v. Waller, 421 U.S. 656, 657 (Marshall, J., conc. op. quoting Georgia, supra); Beer v. United States, supra, at 140; Herron, supra, at 175-176; Heggins v. City of Dallas, Tex., supra, at 743. In Busbee v. Smith, 549 F. Supp. 494, 525 (D.C. D.C. 1982), a court with equal authority with the Justice Department to preclear Section 5 submissions, stated that until preclearance was received on a congressional redistricting plan the election would be postponed "...until the earliest practicable date."

There is further language that Justice Department review of Section 5 submissions was to be an "expeditious alternative", Morris, supra, at 504; a "rapid method of rendering a new law enforceable." Allen, supra, at 549; Georgia, supra, at 538; or a "speedy alternative", Morris, supra, at 503; McCain v. Lybrand, ___ U.S. ___, 79 L.Ed. 2d 271, 280.

As stated in Georgia, supra, the purpose of providing an alternative procedure of submitting a change to the Justice Department was to provide for a rapid way of making a law enforceable. As many changes submitted for preclearance involve election dates, it would seem inconceivable that the Act envisioned that every submission "freezing" an election date until approval by the Justice Department and which was not

precleared until after the election date established by the Act, would require the General Assembly of the State to enact a new law establishing a new election date and submit it all over again for approval. This procedure could continue on ad infinitum if each approval would come after the date established by the law for the election. This procedure in itself would be a way of circumventing the Voting Rights Act and avoiding perhaps unpopular elections. In this case, the Justice Department did not remove their objection until November 19, 1982. Under Appellant's rationale an election could not be held until the General Assembly reconvened in January, enacted new legislation establishing a new election date for Hampton County, ratified the Act, and submitted it to the Justice Department for approval. If this

procedure were followed for every Act that established election dates, the elections would be held years out of time with the present office holders holding over years past their term of office.

As the District Court held:

> [i]t is not questioned that Act No. 549 constituted a Section 5 'change' that required preclearance, but the administrative actions of accepting filings and conducting an election for Trustees was not a change in South Carolina election law, but rather an effort to conform to it. In this court's view, the preclearance requirement of Section 5 applied to the new statute, Act No. 549, requiring that it be precleared before becoming effective, while the ministerial acts necessary to accomplish the statute's purpose were not 'changes' contemplated by Section 5, and thus did not require preclearance. (J.S. 9a)

IV

Hampton County Was Operating Within The Scope of The Voting Rights Act By Proceeding With Preliminary Steps In Filing And "Unfreezing" The Election Date Established By The Precleared Submission.

The United States alleges that "advance preclearance of future, unspecified changes...is contrary to the basic concept of Section 5." Brief For the United States as Amicus Curiae, p. 13. However, these are not unspecified changes, the filing dates were submitted and precleared by the Justice Department and the election date was merely held at a postponed date following preclearance of the submitted Act.

Further, this case does not represent an altering of the scope and effectiveness of §5. There is no departure from the mandates of the Voting Rights Act, the decisions of this Court or the

interpretations of the Justice Department in that the filing dates were submitted and precleared and the election date simply "unfrozen." Nor is this a case of a covered jurisdiction trying to implement an illegal change in the hopes it will be retroactively approved. Brief For Appellants, p. 43. Trying to comply with preliminary steps that will never be finally implemented by the conduct of an election if the Act is not precleared is not by any stretch an attempt to "illegally implement a change" as is proven by this very case in that an election was not held under Act 549 when it did not receive preclearance in time to be held in the November general election.

If the Justice Department instead of originally objecting to Act 549 on August 23 had precleared the Act, and the

County had not initiated the preliminary steps of opening filing on August 16 as required by Act 549, the County would have been unable to enforce the law as precleared. If after receiving preclearance, the filing period had been shortened to the date the letter of preclearance was received and to the end of the time prescribed for filing by the Act, the result would have been an abbreviated filing schedule of August 26-31, resulting in substantially less time to file than originally envisioned by the Act. Further, it would not have been feasible to alert people of these dates in sufficient time for them to have known to file.

If, therefore, all new filing dates had to be set and preclearance was required, the date would have been required to be set far enough in the

future to allow a minimum of sixty-day review by the Justice Department. Therefore, a filing date could not have been set <u>to begin</u> prior to October 26. [5/] If the original fifteen days for filing was provided, filing would have to continue past the November election which would, of course, then also require the date of the election to be altered even though a November election was originally precleared. A special election would therefore have to be held with the possibility of a lower voter turnout. (Brief For Appellants, p. 23). This special election would be necessi-

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5/ This assumes a new date was set on the very date preclearance was received by the South Carolina Attorney General's Office which would, of course, be before the locality received official notification of the letter from the Justice Department.

tated by no other reason than that the preliminary step of filing had not been able to be accomplished.

The hypothetical argument is not made in an attempt to justify a non-compliance with the Voting Rights Act due to practical or administrative problems in holding elections while complying with provisions of the Voting Rights Act. 6/ As repeatedly previously stated, there has been compliance with the Voting Rights Act. Filing occurred when state law required filing, an action that would have been null and void if the Act was objected to as the county proved by its originally not holding the election

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6/ Indeed South Carolina has always been rigorous in making submissions. Perkins v. Matthews, 400 U.S. 379, 393 n. 11; McCain v. Lybrand, __ U.S.__, 79 L.Ed. 2d 271, 284, n. 23.

in light of the objection from the Justice Department; further, the filing was precleared; additionally, the State had that year had a similar act regarding filing approved after the date of the filing had passed and, therefore, had reason to believe this filing would be treated in the same manner; and the election date was simply an unfreezing of the delayed election to a new date.

At some point the State has to be able to implement a proposed change. At some point federal law requirements and state law requirements must co-exist with obvious pre-emence to the federal Voting Rights Act requirements. At some point there must be deemed to have been compliance with the Votirg Rights Act. If the State attemp' t. be in a position to conduct its elec-

tions by allowing a preliminary step of filing for office for an election that will not be conducted if the Justice Department objects to the Act; and if the State holds the election as quickly as feasible following preclearance of an Act, it would appear that the mandate of the Act has been met.

V

The Question of Whether Or Not Section 5 Requires a Showing of Racially Discriminatory Purpose Is Not Before This Court.

Appellants raise the argument of whether or not the district court correctly found that a racially discriminatory purpose or effect was a requirement of a Section 5 case. (J.S. 15). The Court discussed this only in passing and in connection with whether or not an alleged failure of the election commissioner to certify the results of the

referendum was a change that should have been precleared. (J.S. 8a). The Appellants have conceded now in their brief, that the results were certified to the Code Commissioner. (J.S. 6, n. 2, Brief of Appellants, p. 12, n. 2). Therefore, having abandoned this part of their appeal, we would submit that Appellants lack standing to now brief the question of whether or not the District Court was correct in its reasoning of this aspect of the case.

However, the Appellees would assert that the District Court's statement finds support in the language found in the following cases: City of Richmond v. United States, 422 U.S. 358, 378; Georgia v. United States, 411 U.S. 526, 534; Dougherty County, Ga. Bd. of Ed. v. White, 439 U.S. 32, 42.

VI

The Abolishment of The Office of The Hampton County Superintendent of Education Has Been Precleared.

As to Appellants' argument regarding the Office of Superintendent of Education and their allegation that the Superintendent's Office has been abolished without preclearance, the abolition of this Office was a part of Act 549 and was approved when Act 549 was approved. The United States in its brief agrees that this part of Act 549 was precleared. (Brief For United States, pp. 15-16, n. 1).

This finding was the extent of the District Court's determination as to this allegation. (J.S. 10a-11a). Any further questions regarding whether or not his duties have been affected have not been proven at this stage of the litigation

but may be litigated in the Section 2, Fourteenth and Fifteenth Amendment part of this case which is still pending.

CONCLUSION

For all the reasons stated above, the judgment of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX

Expenditures not to exceed certain amount

SECTION 1. (A) The Department of Social Services shall assure that for the period of October 1, 1981, through September 30, 1982, the federal financial participation drawn for the Medicaid expenditures shall not exceed the $217,548,983.00 break-even point or the authorized amounts in the general appropriations act, whichever is less, in order to receive the three percent rebate for the funds withheld.

(B) The State Treasurer shall determine any temporary excess in any debt service account and may lend such monies, on a short term interest bearing note, to the Department of Social Services, the Department of Mental Health and the Department of Mental Retardation, in an amount not to exceed those Medicaid funds which are temporarily retained by the federal government.

(C) The Treasurer shall determine an appropriate interest rate which shall be charged on the entire amount advanced to each of the agencies.

(D) As soon as practicable after July 1, 1982, any of the agencies receiving advances as provided herein shall pay from its 1982-83 appropriation the principal and interest due on the outstanding loan.

(E) The Budget and Control Board shall have the authority to promulgate regulations necessary to implement the provisions of this resolution.

Time effective

SECTION 2. This act shall take effect upon approval by the Governor.

Approved the 25th day of May, 1982.

(R366, S875) **No. 483**

A Joint Resolution Delaying The Filing Period For Candidates For The House Of Representatives And Certain School District Offices And County Council Offices During The Calendar Year 1982.

Whereas, the General Assembly finds that implementation of redistricting plans for the House of Representatives and certain county council and school district offices within counties have been unavoid-

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ably delayed beyond the beginning of the filing periods established for a party primary; and

Whereas, the General Assembly finds it necessary to delay the filing periods to allow adequate time for the adoption of new redistricting plans and proper notice to all candidates of the new district lines; and

Whereas, the General Assembly finds that, in order to avoid as much confusion as possible, the filing periods for all offices not affected by the delay in implementing new redistricting plans should not be disrupted. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Filing period for candidates delayed

SECTION 1. A. Notwithstanding any other provision of law, the provisions of this Joint Resolution shall be applicable during the calendar year 1982 only.

3. The filing period for the office of a member of the House of Representatives shall be opened for the entries of those candidates wishing to offer for such nomination in the party primary at noon on April first and shall close at noon on April fifteenth. The filing period for candidates seeking nomination to any district within a county which has been or is being reapportioned and has not yet received preclearance pursuant to the provisions of Section 5 of the 1976 Voting Rights Act (42 USCA Sections 1973 et seq., shall be delayed to a time period to be determined by the General Assembly.

C. The filing period for the nomination of candidates for all other offices in a party primary shall be held as provided for by law.

Time effective

SECTION 2. This act shall take effect upon approval by the Governor.

Approved the 22nd day of March, 1982.

(R413, S946) **No. 484**

A Joint Resolution To Delay For 1982 Only The Filing Period From Noon, March 16th, To Noon, March 30th, Until Noon, April 23rd, To Noon, May 7th, For Candidates Seeking Nomination To

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